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MEMORANDUM OF LAW

DATE: March 7, 2000

TO: Bonnie Stone, Elections Analyst, City Clerk's Office

FROM: City Attorney

SUBJECT: Extending Charter Amendment Petition Filing Deadline Over A Weekend

QUESTION PRESENTED

Does the deadline for filing charter amendment petitions get extended to the next business day when the normal deadline for filing them falls on a weekend or holiday?

SHORT ANSWER

Yes, under California Code of Civil Procedure section 12(a), the deadline for filing charter amendment petitions is extended until the next business day when the normal deadline for filing them falls on a weekend or holiday.

BACKGROUND

In your e-mail of January 19, 2000, you asked whether the conclusions set forth in a City Attorney Memorandum of Law [MOL] written ten years ago (1989 City Att'y MOL 467) pertaining to filing deadlines for charter amendment petitions are still valid. In that MOL, which I wrote on behalf of the City Attorney, I said that a charter amendment petition, due to be filed on a Saturday, could not be timely filed on the following Monday, but rather had to be filed no later than close of business on the preceding Friday.

ANALYSIS

The general rule regarding filing deadlines when the normal filing date lands on a weekend or a holiday is set forth in California Code of Civil Procedure (CCP) section 12(a). This section generally allows weekend filing deadlines to be extended to the following Monday. *See* 39 Op. Cal. Att’y Gen. 78 1962).

However, case law has carved out a few exceptions to this rule. For example, in *Steele v. Bartlett*, 18 Cal. 2d 573 (1941), the court held that this general rule does not apply when the filing is to be done *before a designated time*. In *Steele*, the court examined Elections Code section 9760, which required that nominating papers for a special election be filed “ ‘not later than twelve-o’clock noon on the *thirty-first* day before the election.’ ” *Id.* at 573. The case hinged on the fact the word “before” appeared in the statute. Under the facts of the case, the thirty-first day was a Sunday. The court held that candidates who filed their nominating papers on Monday, August 11, which was thirty days before the election, filed their papers one day late. *Id.*

In a 1962 opinion, the Attorney General reviewed then existing case law in this state on the issue of filing deadlines. He found that the general rule was followed in situations wherein the statute required an act to be performed “within” a specified time or “upon” a particular day, but the exception applied when the statutes required filing “not less than” or “not later than” a specified number of days “prior [to]” or “before” a designated time. 39 Op. Cal. Att’y Gen. 78, 80 (1962).

However, since that Attorney General’s opinion was issued, the exceptions to CCP section 12(a)’s general rule have been construed narrowly. *See Tran v. Fountain Valley Community Hospital*, 51 Cal App 4th 1464 (1997) (under a statute requiring certain minors to commence actions for professional negligence within three years or *prior to* the minor’s eighth birthday, the court held that a complaint filed on appellant minor’s eighth birthday was appropriate because that day was a Monday and the last date to file the action would have been a holiday, i.e., Sunday).

The question becomes whether the general rule or the exception applies to filing of charter amendment initiative petitions when the normal deadline falls on a Saturday, Sunday, or holiday. There are no published California cases that discuss charter amendment petition filing deadlines falling on a weekend or holiday. Therefore, we analyze the question solely by looking at the governing statutes.

State, not local, law governs charter amendment petitions, and state law establishes their filing deadlines. *See* 1989 City Att’y MOL 30. Charter amendment petitions are required by Elections Code section 9265 to be filed “not more than 200 days *after* the date on which the notice of intent to circulate was published or posted, or both.” [Emphasis added.]

Clearly, the filing deadline in Elections Code section 9265 is not one which falls “prior to” or “before” a designated time. Therefore, the general rule set down in Code of Civil Procedure section 12(a), not the exception, applies to charter amendment petitions whose normal filing date would fall on a weekend or a holiday; and, the filing deadline would be extended to the following business day.

The conclusions in 1989 City Att’y MOL 467 are no longer accurate and this memorandum hereby supersedes it.

CASEY GWINN, City Attorney

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By

Cristie C. McGuire
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